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7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 DEREK WAI HUNG TAM SING,
13 aka "ceven1073,"
14 aka "chuckeven8,"

15 Defendant.
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No. CR 14-212(A)-CAS

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOLLOWING
BENCH TRIAL

I. INTRODUCTION

Defendant Derek Wai Hung Tam Sing is charged in the First Superseding Indictment with 28 counts of unauthorized transmission and attempted transmission of trade secrets belonging to Rogerson Kratos, in violation of 18 U.S.C. §§ 1832(a)(2), (a)(4); four counts of unauthorized possession and attempted possession of trade secrets belonging to Rogerson Kratos, in violation of 18 U.S.C. §§ 1832(a)(3), (a)(4); and one count of unauthorized possession and attempted possession of trade secrets belonging to Precision Engine Controls Corporation, in violation of 18 U.S.C. §§ 1832(a)(3), (a)(4.) Following his waiver of jury trial, this case proceeded to trial before this Court on September 22, 2015. After fully weighing and considering all of the evidence presented during the trial, as well as arguments made by the parties at the close of trial, the Court hereby finds defendant guilty as to Counts 1 through 32 of the First Superseding Indictment and not guilty as to Count 33 of the First Superseding Indictment.

II. The Economic Espionage Act

The Economic Espionage Act, 18 U.S.C. §§ 1831, et seq., criminalizes the theft of trade secrets. Under the statute a trade secret is defined as:

[A]ll forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if--

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public

18 U.S.C. § 1839(3).

1 Applying this definition, the Ninth Circuit has recognized that in order to prove
2 that something is a trade secret the Government must prove three elements. United
3 States v. Chung, 659 F.3d 815, 824 (9th Cir. 2011). First, the government must prove
4 that the owner of the trade secret has taken reasonable measures to keep such
5 information secret. Id. The owner of a trade secret need only take measures that are
6 reasonable under the circumstances; they do not need to take all conceivable measures.
7 See H.R. Rep. No. 24 104-788, at 7 (1996), reprinted in 1996 U.S.C.C.A.N. 4021, 4026
8 (“[A]n owner of this type of information need only take ‘reasonable’ measures to protect
9 this information. . . . [I]t is not the Committee’s intent that the owner be required to have
10 taken every conceivable step to protect the property from misappropriation.”). “Security
11 measures, such as locked rooms, security guards, and document destruction methods, in
12 addition to confidentiality procedures, such as confidentiality agreements and document
13 labeling, are often considered reasonable measures.” Chung, 659 F.3d at 825.

14 Second, the government must prove that the information was not generally known
15 or readily ascertainable by the public. Id. at 824. Information is generally considered to
16 be readily ascertainable where “it is available in trade journals, reference books, or
17 published materials.” Id. at 825. In addition, the mere fact that a particular secret could
18 have been reverse-engineered after a time-consuming and expensive laboratory process
19 does not provide a defense for someone who intended to avoid that time and effort by
20 stealing the secret. See 4 Roger M. Milgrim, Milgrim on Trade Secrets § 15.01 [1] [d]
21 [v]; Pioneer Hi-Bred Int’l v. Holden Found. Seeds, Inc., 35 F.3d 1226, 1237 (8th Cir.
22 1994) (stating that fact “that one ‘could’ have obtained a trade secret lawfully is not a
23 defense if one does not actually use proper means to acquire the information”); Telerate
24 Sys., Inc. v. Caro, 689 F.Supp. 221, 233 (S.D.N.Y. 1988) (“[T]he proper focus of inquiry
25 is not whether an alleged trade secret can be deduced by reverse engineering but rather,
26 whether improper means are required to access it.”).

1 Third, the Government must prove that the secret derived independent economic
2 value from being secret. Chung, 659 F.3d at 825. In assessing the value the secret
3 derives from being secret, “courts most often consider the degree to which the secret
4 information confers a competitive advantage on its owner.” Id. at 826; see also US West
5 Communications, Inc. v. Office of Consumer Advocate, 498 N.W.2d 711, 714 (Iowa
6 1993)(“[I]nformation kept secret that would be useful to a competitor and require cost,
7 time and effort to duplicate is of economic value.”).

8 **III. FINDINGS OF FACT**

9 1. To the extent necessary, each of these findings of fact may be deemed to be
10 a conclusion of law.

11 **A. Defendant Sing**

12 2. Defendant is an electrical engineer who has received both a Bachelor’s and
13 two Masters of Science degrees in Electrical Engineering. He has worked as an engineer
14 at, at least, ten different companies since 1993, working with schematics and trade
15 secrets. Exhibit 106, testimony of defendant.

16 3. In connection with his employment with these companies, defendant has
17 signed a number of agreements regarding the confidentiality of his employers’ trade
18 secrets. Exhibits 104, 107, 108, 125, 128. Defendant understood these agreements to
19 mean that, *inter alia*, company documents were to be returned to the company upon his
20 termination and should not be sent outside of the company without express authorization.
21 Testimony of defendant.

22 **B. Precision Engine Controls Corporation**

23 4. Defendant worked for Precision Engine Controls Corporation (“PECC”) as
24 a contract employee from approximately March 2010 through January 2011. Exhibit
25 106. In January 2015, PECC was purchased by Meggitt, Inc. Testimony of William
26 Conn, Joel Mawhinney.

1 5. PECC is a company that designs, manufactures, and supplies industrial
2 turbine products, including valve actuators and control systems. One of the company's
3 new products, which has only recently come to market, is the Rotary Actuator ("RAX").
4 The RAX opens and closes valves in large turbine engines; in other words, the RAX
5 precisely controls the flow of fuel and gas to and from the engines for large products
6 included on, among other things, oil rigs. Testimony of Conn, Mawhinney.

7 6. The RAX has two primary circuit boards, the Driver (which controls the
8 power) and the Central Processing Unit ("CPU") (which interprets the commands
9 executed by the person operating the RAX and sends them to the Driver circuit board).
10 Testimony of Conn.

11 7. The RAX Driver is a product used or intended to be used in interstate or
12 foreign commerce. Testimony of Conn.

13 8. In 2010, the then-parent company of PECC, United Technologies
14 Corporation ("UTC"), utilized the services of HCL Technologies Ltd. ("HCL") to
15 identify a potential contract engineer to employ. HCL, in turn, utilized the services of
16 Prabhav eGlobal Services LLC, also known as Infoways ("Infoways"), to identify
17 potential contract engineers for UTC. Exhibit 140.

18 9. Both the agreements between UTC and HCL, and HCL and Infoways,
19 contained confidentiality agreements which, among other things, required them to bind
20 their employees to not disclose confidential or proprietary information and specified that
21 inventions, designs, and work products made while working for UTC were the property
22 of UTC and its companies. Exhibits 126, 127. When Infoways eventually identified and
23 employed defendant, defendant signed an employment agreement. The employment
24 agreement specified that defendant would receive confidential information belonging to
25 Infoways or its clients, including the "Client's methods, trade secrets, programs,
26 procedures, manuals, confidential reports" Exhibit 125.

27 10. Defendant further agreed:
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1 that he/she will receive all such confidential information in strict confidence
2 and further agrees to maintain and assist the Company in maintaining the
secrecy of such information.

3 Employee further covenants and agrees that every document, computer
4 media, computer software program, notation, record, diary, memorandum,
5 development, investigation, or the like, and any method or manner of doing
6 business of Company made or acquired by the Company during his/her
7 period of employment with Company shall be the sole and exclusive
8 property of Company. Employee will not during the period of employment
9 nor anytime thereafter, directly or indirectly, disclose to others and/or use
10 for his/her benefit or for the benefit of others, confidential information
11 including but not limited to trade secrets, customer lists, employee and
12 prospective employee information, proprietary software products, profit and
loss statements, financial statements, financial ration [sic] analysis and any
other financial information pertaining to the business of the Company or
any of its clients, consultants, affiliates acquired by him/her during the
period of his/her employment; except to the extent as may be necessary in
the ordinary course of performing his/her duties as the employee of the
Company. Upon termination of his/her employment by the Company,
he/she will return to the Company or to the Company's client all materials
and information and any copies thereof and certify to the Company that
he/she no longer has any rights to such material or information.

13 Exhibit 125.

14 11. When defendant began work at PECC in March, 2010, he signed an
15 additional agreement directly with UTC wherein he agreed not only not to use the
16 proprietary information of other companies in his work at UTC, but also that he would
17 not disclose technical or business information developed by UTC, and that he would
18 leave with UTC all materials containing such information upon the termination of his
19 employment. Exhibit 128.

20 12. Defendant signed Exhibit 128 in front of PECC Human Resources manager
21 Patricia Clark, who, as a general practice, reviewed these agreements with both incoming
22 and outgoing employees. Testimony of Clark. Defendant admitted that he signed this
23 document, and understood that it restricted him from keeping company documents after
24 he left the company. Testimony of defendant.

25 13. The Court finds that the RAX Driver schematic was one of PECC's trade
26 secrets.

1 14. PECC took reasonable measures to protect its trade secrets. For example,
2 PECC schematics, including the RAX Driver schematic, were marked with the following
3 notice:

4 Precision Engine Controls Corporation claims proprietary rights in the
5 information disclosed hereon. This drawing is furnished in confidence on
6 the express understanding that neither it nor any reproduction thereof will
be disclosed to others or used for the purpose of manufacture or
procurement of the article or part shown hereon.

7 Exhibit 85. Employees, including defendant, understood that the notice prohibited them
8 from disclosing the information to others without express authorization. Testimony of
9 Conn, Mawhinney, defendant.

10 15. PECC also had nondisclosure agreements with its vendors and customers
11 who saw trade secrets, but even then, would not let them see the actual schematics.
12 Testimony of Conn.

13 16. PECC also protected its trade secrets by physical and technical security
14 including locks and codes on doors, storing of trade secrets on protected servers
15 requiring unique and limited usernames and passwords, limiting access to documents
16 and servers based on supervisor approval and need, routine secure backup of servers,
17 identification tags on visitors, and limiting visitors. Testimony of Conn, Paul Bench,
18 Mawhinney, and defendant.

19 17. The RAX Driver schematic was not something that was known or readily
20 ascertainable by persons outside the company. Without the schematic, it would likely
21 take a very long time to reverse engineer the RAX Driver circuit board, because just
22 looking at a circuit board would tell someone very little about the way a product has
23 been put together, and why. This is because there are a number of layers in the circuit
24 board with many connections between the parts. Without the schematic, a person would
25 first need to figure out what the board does. A person would need to methodically take
26 off each component, and measure them with a meter to figure out what it is and how it
27 works in the design. This would be exceedingly difficult and time-consuming, likely
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1 requiring many months of work. Then, a person would need to examine and repeatedly
2 test the board to determine how it works under various conditions, such as in high or low
3 temperatures. Overall, this process could take months or even years of dedicated work.
4 However, having the schematic would drastically decrease the amount of time necessary
5 to reverse engineer the RAX Driver, because much of the information that would be
6 revealed from this testing would be readily apparent simply by reading the schematic.

7 Testimony of Conn.

8 18. The RAX Driver schematic is also not something that is obvious to or
9 already in use by PECC's competitors. Testimony of Conn, defense expert Noe
10 Martinez. There are no exact copies of the RAX being sold on the market, and the
11 design is unique. Testimony of Conn, Martinez.

12 19. The RAX Driver schematic also derived independent economic value from
13 being secret, and was valuable to PECC. Testimony of defendant, Martinez, Conn,
14 Mawhinney, Fred Cordova. It is the product of a great deal of valuable development
15 time, testing, and certifications. Testimony of Conn, Mawhinney, Cordova. In addition,
16 PECC's products are repaired only by PECC. Accordingly, PECC does not share with
17 any other company the information necessary to perform these repairs, such as the RAX
18 Driver schematic. If a competitor had the RAX Driver schematic, it could attempt to
19 take over the repair market from PECC. Testimony of Conn, Cordova.

20 20. The RAX design differentiates itself in two important ways. First, the RAX
21 has integrated electronics that are part of the valve that goes into the customer's engines.
22 This greatly simplifies installation, and gives PECC a competitive advantage.
23 Testimony of Conn. Second, and relatedly, this integration with the engine means that
24 the board needs to work in extreme heat and related conditions. The design of the circuit
25 board is such that the system conducts heat away from the various parts, and the way in
26 which this is done would not be obvious from just looking at the circuit board.

27 Testimony of Conn. The company's competitors do not have a product with the unique
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1 design features of the RAX. Testimony of Cordova. This design is also used across
2 many other products PECC sells, which operate under similar conditions. It is, therefore,
3 a building block for PECC's products and is very valuable to the company. Testimony
4 of Conn, Cordova, Martinez.

5 21. From 2007 to 2014, development costs for the RAX were approximately
6 \$3,837,832. Exhibit 129A; Testimony of Warren. The development cost for just the
7 RAX Driver board was approximately 12.5 percent of that figure, or \$479,729.
8 Testimony of Conn. PECC anticipates selling the RAX for \$20,000-\$30,000 each, and
9 the life expectancy of the RAX is at least 20 years. Exhibit 129B; testimony of Cordova,
10 Warren. Anticipated revenue for sales of the RAX and repairs through 2020 are
11 \$58,189,267. Exhibit 129B.

12 22. While working for PECC, and against company policy, defendant inserted a
13 thumb drive into his work laptop, copied the following materials, and then saved them
14 onto his personal laptop: (1) the RAX Driver schematic, Exhibit 85; (2) two documents
15 which show the board layout for the RAX Driver, Exhibit 86; (3) a zip file named
16 "latest_gerbers_attached.zip," which includes "gerber" designs for the RAX Driver
17 board that are industry standard methods for communicating how the schematic should
18 be produced into a physical board, Exhibit 87; (4) a zip file named "drilltable.zip," which
19 includes images of the drill tables, which are designs for how the physical board will be
20 drilled to install connections and materials, Exhibit 88; (5) a document named "Test
21 Procedure for the RAX Driver Board rev.2.docx," which sets forth the method for testing
22 if the RAX Driver board is working, Exhibit 89; and (6) a file entitled
23 "PCB_Project1.pdf" which is a detailed PDF of the RAX Driver schematic. Exhibit 90.
24 Defendant stored these files on his computer in a folder labeled
25 "precision_engine_controls." Testimony of defendant, Conn, FBI Special Agent
26 Michael Fitzpatrick.

23. When defendant completed his work for PECC, he did not return any of these materials to PECC despite his explicit agreement to do so. Testimony of Clark, defendant.

C. Rogerson Kratos

24. Defendant also worked at Rogerson Kratos (“RK”) from April to November, 2012. Exhibits 107, 108, 109, 119; Testimony of Geoff Owers.

25. RK is a company headquartered in Pasadena that designs, manufactures, and supplies a product line of instruments, active matrix liquid crystal display systems, and other aerospace products used by many current world airlines, helicopters, and military aircraft. RK avionics are used in, among others, Bell Helicopters (models 412, 427, 429, and 430), Korean Aerospace, Inc.’s (“KAI”) fighter jets used to train fighter pilots, and the CASA line of aircraft (now Airbus). Among others, the units designed and manufactured by RK consist of: Data Acquisition Units (“DAU”),¹ “Display Units” (“DU”),² Electronic Flight Instrumentation Systems (“EFIS”),³ Integrated Instrument Display Systems (“IIDS”),⁴ and Engine Hydraulic Pressure Displays (“EHPD”).⁵ Testimony of Owers, Larry Smith.

26. When defendant was hired by RK, on April 30, 2012, he signed a Confidentiality Agreement. Exhibit 108. The agreement defines “Proprietary

¹ The DAU for the Bell 427 acquires information from the engine and passes it to the DU, which then processes the information and provides it to the pilot. Testimony of Owers.

² The DU for the Bell 427 converts information from the DAU into a display that can be read by the pilot, including providing engine information and warnings regarding the engine. Testimony of Owers.

³ The EFIS for the Bell 430 provides navigational information to the pilot, including speed, direction, pitch, and roll. Testimony of Owers.

⁴ The IIDS for the Bell 430 combines the functions performed by the DU and the DAU on the Bell 427. First, it acquires information from the engine. Then, it displays that information to the pilot, including any warnings regarding the engine. Testimony of Owers.

⁵ The EHPD for the KAI jet displays information to the pilot, such as engine temperature, fuel flow, hydraulic information, and oil pressure. Testimony of Owers.

1 Information” as including “trade secrets” and “all information that has or could have
2 commercial value.” Under the agreement, defendant was obligated to (1) surrender all
3 data, computer files, documents and materials of any nature pertaining to his work with
4 RK to RK upon termination of his employment, and (2) not disclose any RK proprietary
5 information during or after his employment with RK. Exhibit 108. On April 30, 2012,
6 defendant signed an acknowledgment that he had received and was required to read the
7 RK Employee Handbook. Exhibit 107. The Handbook states that he must keep RK’s
8 confidential information and trade secrets confidential, that confidential information may
9 not be removed without written authorization, and that former employees may not use or
10 disclose confidential information or trade secrets for any purpose. Exhibit 107. RK
11 employees and defendant understood that these agreements bound them and did not
12 permit employees to keep RK documents after termination. Testimony of Scott Munroe,
13 Michael Veverka, defendant.

14 27. When defendant was hired, as is the usual practice, RK Human Resources
15 employee Marissa Lopez provided defendant with these documents, and asked him to
16 review them and sign them. Defendant did so, and had no questions during his
17 approximately 45 minutes to one hour meeting with Lopez. Testimony of Marissa
18 Lopez. Defendant admitted that he understood that these documents required that he not
19 keep any company documents after leaving the company and not send company
20 documents to others without express permission. Testimony of defendant. In addition,
21 at his exit interview, defendant was instructed to return any RK property. Testimony of
22 Lopez.

23 28. Defendant is charged with transmission, possession, and attempted
24 transmission and possession of seven RK schematics. Exs. 7A, 7G, 7H, 7I, 7P, 7M, and
25 7X. The Court finds that these schematics are trade secrets. In addition, each of the
26 trade secrets relate to products made by RK that are used or intended to be used in
27 interstate or foreign commerce. Testimony of L. Smith, Owers.
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1 29. RK took numerous methods to protect its trade secrets, including these
 2 seven schematics. Testimony of L. Smith. For example, each of the RK schematics
 3 defendant is charged with transmitting and possessing was marked with the following
 4 notice, or one similar to it:

5 All information contained on this drawing is proprietary to ROGERSON
 6 KRATOS for use in operation, repair and maintenance of Rogerson Kratos
 7 products. Its reproduction for use in any other way or for any commercial
 8 purpose without prior written permission is forbidden. All rights on this
 9 material are reserved. This legend shall be marked on any reproduction
 10 hereof in whole or in part.

11 See, e.g., Exhibit 7A. Defendant, as well as other employees, understood that this notice
 12 required that he not keep or distribute the documents outside RK. Testimony of
 13 Veverka, Munroe, Owers, defendant.

14 30. RK also had nondisclosure agreements with its vendors and customers who
 15 saw trade secrets, but even then, would not let them see the actual schematics.
 16 Testimony of L. Smith, Owers.

17 31. RK also protected its trade secrets by physical and technical security
 18 including locks and codes on doors, storing of trade secrets on protected servers
 19 requiring unique and limited usernames and passwords, limiting access to documents
 20 and servers based on supervisor approval and need for access, routine secure backup of
 21 servers, a sign-in for visitors, and limiting visitors. Testimony of Owers, Veverka,
 22 Munroe, Mark Popovich, defendant.

23 32. As part of his duties at RK, defendant was given access to a limited number
 24 of schematics and related documents, to include the following (organized by RK project,
 25 and including references to exhibit number; charged exhibits are underlined):⁶

26 **KAI:**

27 7A: "Schematic IO A, EHPD, CEBI, KAI";

28 7AA: "Schematic IO_A, EHPD, CEBI, KAI"

⁶ Defendant also obtained other materials, including schematics and test procedures related to the Bell 412 EP and CASA aircraft, along with Bell Helicopter's own documents that were in the custody of RK. (Exhibits 7Y, 8C-I, 8K, and 8M.)

Bell 427 DAU:

7C: "Schematic, Motherboard";
7G: "Schematic, PCB CPU Module with FPGA";
7H: "Schematic, Power Supply/Led Backlight Drv.";
 7O: "Schematic, Rear Panel";
 7Q: "Schematic, PCB MBUS, 4 POS";
 7T: "Schematic, Hybrid I/O"

Bell 427 DU:

7D: "Schematic, Motherboard No.2, DU";
 7E: "Schematic; Display Generator";
 7F: "Fan Assembly, Bottom Center";
 7J: "Schematic Power Supply/Led Backlight Drive.";
 7K: "Schematic, PCB, Digital I/O, DU";
7P: "Schematic, Rear Panel";
 7R: "Schematic, PCB MBUS Interconnect 6 POS";
 7U: "Schematic, Power Supply/LED Backlight Drive";
 7V: "Schematic, Mother Board No.1, DU";
 7W: "Schematic, Display Generator";
 8B: "Schematic, Rear Panel"

Bell 430 IIDS:

7B: "Schematic Diagram, Interconnect";
7I: "Schematic Power Supply/Led Backlight Drv.";
 7L: "Schematic, Digital I/O IIDS";
7M: "Schematic Diagram, Display Generator";
 7N: "Schematic Diagram, LQ056A3CH01 UIC";
 7S: "Scm, MBUS Interconnect 8 POS";
 7Z: "Schematic Diagram Analog I/O"

Bell 430 EFIS:

7X: "Schematic Optrex LCDI/LED Driver & Ctrl";
 8A: "Schematic, Rear Panel"

Testimony of Owers, defendant

33. The schematics and documents were for projects that defendant was tasked with working on, and in some instances, the schematics were ones with defendant's notes, or with other indications that defendant had the only printed copy of that schematic. See, e.g., Exhibit 7A; Testimony of Munroe, Owers, defendant.

34. The charged schematics "Schematic IO_A, EHPD, CEBI, KAI," Exhibit 7A; "Schematic, PCB CPU Module with FPGA," Exhibit 7G; "Schematic, Power

1 Supply/Led Backlight Drv.,” Exhibit 7H; “Schematic, Rear Panel,” Exhibit 7P;
2 “Schematic Power Supply/Led Backlight Drv.,” Exhibit 7I; “Schematic Diagram,
3 Display Generator,” Exhibit 7M; and “Schematic Optrex LCDI/LED Driver & Ctrl,”
4 Exhibit 7X are each electrical engineering schematics for circuit boards, developed by
5 RK. The schematics show the process by which real world signals are interpreted into
6 digital data to be displayed for a pilot, and show the connections between the hardware
7 and software to make that happen. Testimony of Owers.

8 35. The charged schematics were not something that was known or readily
9 ascertainable by persons outside the company. Each schematic took years for RK to
10 develop, including making numerous revisions after conducting tests and obtaining
11 various approvals. Testimony of Owers, L. Smith. There are numerous parts on a circuit
12 board and thousands of connections between those parts. The connections between the
13 parts are critical to the design of the circuit board. The schematic explains all of these
14 connections and which connections are necessary for the board to work. Without the
15 schematic, a person could theoretically use a multimeter to determine the connections
16 between the parts. But where there are thousands of connections to dozens or even
17 hundreds of parts, the task would be incredibly tedious and time consuming. Another
18 difficulty the competitor would encounter relates to parts. The schematic provides part
19 numbers for the parts on the board. If a competitor were to acquire a circuit board and
20 attempt to discover the parts used on the board, in some instances it would not be able to
21 determine the part number with just the physical board because the number is not on the
22 part itself. Testimony of Owers. The amount of time it would take to reverse engineer
23 the circuit board with a schematic in hand would be substantially shorter than without
24 the schematic because all of the connections between parts would be readily apparent
25 from the schematic. Testimony of Owers, Martinez.

26 36. The RK schematics are also not something that is obvious to or already in
27 use by RK’s competitors. Testimony of Owers, Robert Taylor, Martinez. There are no
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1 exact copies of the RK products being sold on the market, and the designs of the
2 schematics are unique. Testimony of Owers, Taylor, Martinez.

3 37. Each charged RK schematic also derived independent economic value from
4 being secret. Current and former RK employees, including defendant, testified that the
5 schematics were valuable to RK. Testimony of Owers, Martinez, defendant, L. Smith,
6 Taylor, Jonathan Smith. The schematics derive value from not being known by
7 competitors because otherwise, the competitors could develop the same exact products
8 much faster. Testimony of Owers, Martinez, defendant, L. Smith, Taylor. Moreover, at
9 a minimum, the schematics would enable a competitor to compete with RK for repair
10 work on RK products. Id. All schematics for the 427, 430, and KAI have passed
11 rigorous testing, including exposing the circuit board to extreme voltages and power
12 outages. (Testimony of Owers, Taylor, L. Smith.) This is because aircraft undergo
13 extreme stresses. The testing is designed to ensure that RK's avionics can survive those
14 stresses. Giving a competitor the schematic, which has been refined after substantial
15 testing, would give the competitor a roadmap for how to design a board that would pass
16 these tests. Testimony of Owers, Taylor, L. Smith. At trial, defendant admitted that
17 shortcutting that work would be valuable to a competitor because it would expedite the
18 competitors "time to market," i.e., the time necessary to put a product out for sale on the
19 market. Testimony of defendant. Defendant also testified that, in his opinion, for
20 companies in RK's industry, "the time to market is crucial." Testimony of defendant.
21 Defendant also admitted that the schematics have value to RK. Testimony of defendant.

22 38. In addition, the designs in the schematics were integral to almost every
23 product that RK sells, and were re-used in a variety of products to shorten development
24 time. For example, the Bell 429 design has a number of boards directly lifted from
25 previous products. Testimony of Owers. RK positions itself in the marketplace as
26 unique because it is able to take a stable physical design that is tested and secure, but can
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1 be modified and customized pursuant to a client's needs. In this way, the schematics
2 were key to RK's business. Testimony of Taylor.

3 39. Furthermore, RK requires its customers to only repair their products
4 through RK. Accordingly, it does not share with any other company the information
5 needed to do these repairs, such as RK's schematics (including the charged schematics).
6 If a competitor had these schematics, they could attempt to take over the repair market
7 from RK. RK's current and former employees testified that the repair market comprises
8 a substantial portion of RK's business. Exhibit 122; testimony of Taylor, L. Smith, J.
9 Smith.

10 40. While working at RK, defendant took home and retained the documents
11 listed above. In addition, while employed at RK, defendant also took at least 43 pictures
12 of the testing of RK's products on his phone. Exhibits 38-80, 139; testimony of
13 defendant, Fitzpatrick. He primarily took the pictures while at a company called
14 Environment Associates, Inc., which would test the above-listed products for RK.
15 Exhibit 139. Defendant took the pictures because he felt they were helpful to his work
16 on the schematics, and would be helpful to his supervisors. Testimony of defendant.

17 41. Defendant's performance at RK was marked by delays in completing
18 assignments, late attendance, and an unprofessional attitude. For example, defendant
19 created, purchased, and distributed to other employees a number of items including
20 mugs, bottle openers, chocolate bars and pens that were inscribed: "Imbecile: a person of
21 very low intelligence; . . . Rogerson Kratos design team member;" or "RK Imbecile
22 Design Team: EO is the key to the design! Let's hold meetings to create EOs to fix our
23 previous EOs;" or "Dark chocolate is much needed for all the IMBECILES on the
24 Rogerson Kratos design team" ⁷ Exhibits 115, 116; testimony of Veverka,
25 defendant. Defendant spent many hours developing these products, and hundreds of
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27 ⁷ "EO" is shorthand for "Engineering Order," which is the term used when a
28 product needs to be fixed.

1 dollars. Testimony of defendant. He also sent out unprofessional emails, and caused
2 discord among some of RK's staff. Testimony of Munroe, Veverka, defendant.

3 42. In response, defendant's direct supervisors repeatedly discussed these issues
4 with defendant and advised him to correct his behavior. On November 26, 2012,
5 defendant was given a negative performance appraisal, which again raised these issues
6 and discussed areas of improvement. Exhibit 117; testimony of Owers, defendant.
7 Defendant did not agree with this assessment of his performance and wrote that he
8 disagreed with the evaluation on the performance review. Defendant's behavior did not
9 improve, and on November 28, 2012, defendant was fired by RK. Exhibits 118, 119;
10 testimony of Owers, Lopez, defendant. Defendant was angered by the firing, and felt
11 that he had "lost face" by being fired by people he considered to be lesser engineers.
12 Testimony of defendant.

13 43. Defendant did not return to RK any of the materials he took during his
14 employment, despite his explicit agreement to do so and being asked to do so at his
15 termination meeting. Testimony of Lopez, defendant.

16 **D. Defendant Compiled the Trade Secrets**

17 44. After being fired from RK, defendant began to scan and package the trade
18 secrets from RK. He packaged the trade secrets with sufficient supporting
19 documentation and instructions so that other competitor companies would be able to use
20 the trade secrets and reverse engineer RK's products. Defendant admitted that, in
21 preparing these trade secrets, he "wanted to get back at Rogerson Kratos" for not fully
22 appreciating his work while he was an employee. Testimony of defendant.

23 45. On December 23 and 24, 2012, and January 3, 4, 6, and 7, 2013, defendant
24 spent many hours creating .pdf documents on his home computer by scanning RK
25 physical documents, one-by-one, on his home printer/scanner. Each document was
26 named by the scanning program on his printer/scanner by the date and time that it was
27 scanned, for example, "12-23-2012 08:36:50PM.pdf." Exhibits 137, 138; testimony of
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1 defendant, Fitzpatrick. After these documents were scanned into his computer,
2 defendant zipped the files into one file labeled, "scans.zip." Exhibits 8A-M; testimony
3 of defendant, Fitzpatrick. The scans.zip file contained 291 single-page .pdf files. The
4 documents defendant scanned into his home printer/scanner were later found in a box
5 during the search of defendant's home. Exhibit 100; testimony of defendant, Fitzpatrick.

6 46. On January 7, 2013, defendant took the remaining RK documents to a copy
7 center of some kind, and had them scanned into computer files on a larger machine.
8 These documents were all scanned into one .pdf document labeled, "schematics.pdf."
9 Exhibits 7A-AA; testimony of defendant, Fitzpatrick. Schematics.pdf contains 138
10 pages of schematics, totaling 27 individual schematics. The charged schematics are only
11 a portion of the trade secrets included in the document.

12 47. On January 8, 2013, defendant also scanned the PECC RAX Driver
13 schematic documents, one-by-one, with his home printer/scanner and created the same
14 type of single-page .pdfs as he had with the RK schematics and documents. Exhibits 85,
15 86; testimony of defendant, Fitzpatrick. The other PECC documents referenced herein
16 were saved to his computer toward the end of his employment with PECC in 2010.
17 Exhibits 87-90; testimony of defendant, Fitzpatrick.

18 48. On January 9, 2013, defendant created two "readme.doc" files: one for RK,
19 and one for PECC. A readme.doc file is named to catch a recipient's attention and
20 provide the recipient with information about other files in a directory. Testimony of
21 defendant. The readme.doc for PECC began with "Per Precision Engine Controls," and
22 then explained what a RAX Driver is and does. This information was taken directly
23 from PECC's website. Testimony of defendant. It then said:

24 Enclosed within this memory stick is the schematics and board layout for
25 the power section of the rotary actuator from Precision engine controls corp.
26 There are two electronics pwbs located within this design, the power
27 electronics board and the digital microcontroller board. The power board is
28 the most difficult part of the design. You should have all the info necessary
to recreate the design. Purchase a couple of the units and reverse engineer
the design.

1 Now the active clamp has Vishay dale resistors, 50W to absorb the regen
2 power from the 3 phase brushless dc motor. You will find the actual part
number in the unit.

3 When you operate in super slow sine wave analog signal input, 0.1Hz, the
4 brushless motor will exhibit the "cogging" effects. The gearing has to be
increased to remove this unwanted effect. Reverse engineer PEC gearing.

5 20A in the power stage was a big thing for PEC, they were unable to get it
6 using igbts. Increase the size of the housing, the metal aluminum so that
you can get 20A for torque. That is a motor spec (inch ounces/A.) Check
7 your motor/torque requirements.

8 Exhibit 84. This document was saved onto defendant's computer.

9 49. The RK readme.doc said:

10 Enclosed is schematics to LCD avionics helicopter manufacturer. This is
the electronics hardware design which is utilized in every product in which
11 they sell. In other words, the manufacturer copies the hardware design
across every single product while only changing the software. EFIS, IIDS,
12 DAU, DU. 427, 429 (different power supply), etc. Only the software
changes. Order their products and reverse engineer the design. You should
13 have enough info to figure out how they do it. FYI, there are problems
within the designs; however, this is the basic framework of how they do
14 their electronic design. Also, there are pictures of the test boxes.

15 Exhibit 6.

16 50. These documents would assist a competitor company in reverse engineering
RK and PECC's products. They therefore would provide an economic benefit to these
17 competitors. These documents also demonstrate defendant's belief that the materials he
transmitted (or, in the case of PECC, possessed), were proprietary information not
18 otherwise readily available to the public. Defendant created the readme.doc files so that
the recipients would understand what they were receiving, and instructed them to reverse
19 engineer the products using the schematics. He also provided advice about how to solve
perceived problems with the designs. In the documents, defendant did not make any
20 statement about the designs being bad, embarrassing, or old. Testimony of defendant.

21 51. Also on January 9, 2013, defendant created .zip files for the images that he
22 had taken of RK test procedures, and labeled them "images.zip"; "images1.zip";
23 "images2.zip"; "images3.zip"; "images4.zip"; "images5.zip"; and "images6.zip." These
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1 images had been transferred from his phone, and were found on his computer during the
2 search of his house. Exhibits 9-15, 38-80, 137; testimony of defendant, Fitzpatrick.

3 52. On January 10, 2013, defendant created a .zip file, zipping together the
4 PECC RAX Driver schematic and layout documents he had scanned on January 8, 2013,
5 into a file called "schematicspdf.zip." He also zipped together other PECC documents
6 into a file called "docs.zip," including the PECC readme.doc file, the Test Procedure,
7 and other documents. Exhibits 84-90; testimony of defendant, Fitzpatrick.

8 **E. Defendant Transmitted the Trade Secrets**

9 53. On January 9, 2013, defendant created an email address in a false name.
10 Testimony of defendant. These email accounts were titled ceven1073@gmail.com and
11 chuckeven8@gmail.com, and did not use any true information or his real name. Exhibit
12 29; testimony of defendant. Defendant created these accounts not at his house, but at a
13 Starbucks using its public wi-fi connection. Exhibits 27, 28, 29. Defendant has at least
14 two email accounts using his own name, but chose not to use those accounts to send the
15 trade secrets. Testimony of defendant, Fitzpatrick. Accordingly, these email addresses
16 allowed defendant to conceal his true identity. The fashion in which he created the email
17 addresses and transmitted the trade secrets suggests that defendant believed he was
18 transmitting information of a sensitive nature, such as trade secrets. Moreover, it
19 suggests that he felt the need to hide his actions from law enforcement, RK, or both,
20 likely because he recognized that his actions would injure RK and benefit its
21 competitors.

22 54. Once he had created the email addresses, on the same day, defendant began
23 to email companies that he perceived to be competitors of RK using the
24 ceven1073@gmail.com account, in order to send to them the compiled trade secrets,
25 supporting documents, and readme.doc instructions. Exhibit 30; testimony of defendant.
26 Again, defendant tried to hide his involvement; he appears to have sent most or all of
27 these emails while logged in at the Starbucks. However, on at least one occasion, he
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1 neglected to log out of the ceven1073@gmail.com email account until he was at his
2 house, and thereby accidentally revealed his participation. Exhibits 28-32.

3 55. Defendant spent a few hours on the internet searching for competitors of
4 RK by entering the search terms "LCD Avionics Displays" or something similar.
5 Testimony of defendant.

6 56. On January 9, 2013, and on several days thereafter, defendant emailed or
7 contacted through a website the following companies, each of which are avionics
8 companies or have avionics departments: Aspen Avionics, Inc., Meggitt Avionics,
9 AvionicsLCD, Esterline Corporation, The Thales Group, Inc., and Universal Avionics
10 Systems Corporation. Each time, defendant titled the email "technical support/
11 engineering support email address?" or something similar, and asked "can you send me
12 your engineering support email address for flight displays?" or something similar.
13 Exhibits 4, 19, 30, 132-135; testimony of defendant, Fitzpatrick. Defendant testified that
14 he wanted the emails to reach someone in the engineering departments of these
15 companies, presumably so that they would understand the schematics. Testimony of
16 defendant.

17 57. In the case of Aspen, employee Michael Studley responded to the email,
18 and asked defendant to identify himself. Exhibits 19, 30. Defendant refused to identify
19 himself, but asked if Aspen manufactured its own flight displays. When Mr. Studley
20 confirmed that they did, defendant emailed him "schematics.pdf," "scans.zip," and six of
21 the seven images.zip files, along with the readme.doc, despite Mr. Studley asking
22 defendant to stop. Defendant said in the email "please find the attached technical
23 documentation (schematics.) I will be sending it in several emails. Please forward it to
24 your engineering group." Exhibits 19, 30.

25 58. Defendant also attempted to send RK's materials to The Thales Group, Inc.,
26 but the emails failed to go through. Exhibit 30.

1 59. In the case of Meggitt, defendant sent an inquiry through its website, again
2 using the fake name “c. even” and the fake company “abc” to avoid detection. Exhibits
3 4, 30; testimony of Richard Johnson, defendant. Meggitt employee Richard Johnson
4 responded by email on January 10, 2013, and asked for clarification. Testimony of R.
5 Johnson. In response, on January 14, 2013, defendant responded by sending a series of
6 emails to Johnson using the ceven1073@gmail.com account, attaching “schematics.pdf,”
7 “scans.zip,” and six of the seven images.zip files, along with the readme.doc. In the
8 emails, defendant directed Johnson to “please forward to engineering lcd avionics
9 displays.” Exhibits 4, 30; testimony of Johnson.

10 60. Also on January 14, 2013, defendant began to send out USB flash drives --
11 each containing exact copies of “schematics.pdf,” “scans.zip,” all seven images.zip files,
12 and the readme.doc -- to Aspen, Meggitt, and Barco, Inc., also a company with an
13 avionics department. Exhibits 132-134, 137; testimony of defendant. He mailed two
14 drives to Aspen in Albuquerque, New Mexico, in two separate envelopes. Exhibits 17,
15 18, 133. He mailed one drive to Barco in Xenia, Ohio, and one to Barco in Duluth,
16 Georgia. Exhibits 20-24, 134. He also mailed one drive to Meggitt, in Fareham,
17 England. Exhibits 1-3, 132.

18 61. Defendant mailed out the USB flash drives because the files appeared to be
19 too big to email, and he was having trouble completing the transmissions. He went to a
20 store and purchased the flash drives to complete the task. Testimony of defendant.

21 62. On each envelope defendant typed the business name and address of the
22 competitor company as both the recipient and sender of the envelope. Exhibits 1, 21, 24.
23 Defendant also addressed each envelope to the engineering department of the competitor
24 company. Id. Defendant included no information that would permit the recipient to
25 identify him.
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1 63. While each company received the USB Flash drives, each was suspicious of
2 receiving an unrequested thumb drives and did not insert them into their computers.
3 Exhibits 132-134. They did, however, retain the thumb drives.

4 64. With every transmission, defendant sent out each of the seven charged trade
5 secrets as well as numerous other RK trade secrets which could be used in tandem with
6 all of the other information. In several cases he sent out all, or almost all, of the
7 schematics for the circuit boards that make up a product (for example, the Bell 430 IIDS,
8 427 DU, and 427 DAU). Testimony of Owers; exhibits 7A-AA, 8A-M, 16.

9 65. At no point did defendant transmit any PECC documents, including
10 documents relating to the RAX driver, to any of PECC's competitors.

11 **F. RK Discovered that the Trade Secrets Had Been Sent**

12 66. When Meggitt employee Richard Johnson received the January 14, 2013
13 emails from defendant containing the trade secrets, he opened a few of the documents
14 and was surprised by their contents. He felt that the documents contained the "crown
15 jewels" of RK, and were trade secrets that he was not supposed to be seeing. Testimony
16 of Johnson.

17 67. Mr. Johnson soon thereafter informed Larry Smith, the president of RK, by
18 email, that he had received the documents. Exhibits 5, 132; testimony of Johnson, L.
19 Smith. Mr. Johnson reassured Mr. Smith that after he looked quickly at a few pages of
20 the confidential data and read the readme.doc, he had recognized the material as
21 sensitive, and thus no one else at Meggitt had looked at the information, and it had been
22 deleted from Meggitt's servers and backups. Exhibit 5. Mr. Johnson then forwarded the
23 emails and some of the information that he had received to Mr. Smith.

24 68. On January 28, 2013, Mr. Johnson emailed again to say that Meggitt had
25 now received the thumb drive that defendant had sent. Exhibit 5; testimony of Johnson,
26 L. Smith. Meggitt had reviewed the directory for the drive, and it matched the files that
27 were sent in the emails on January 14, 2013. At the direction of Meggitt's lawyers,
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1 employees of Meggitt then destroyed the drive, but sent the packaging, directories, and
2 pictures to Mr. Smith. Exhibits 1-3; testimony of Johnson, L. Smith.

3 69. Mr. Johnson believed that the documents sent to him were trade secrets of
4 RK, and, had he used, the documents, they would have had value to Meggitt. He and
5 other engineers would have compared the schematics to their own schematics to obtain
6 design ideas, and this would have been valuable because it would have shortened
7 development time for competing products. Testimony of Johnson. Even designs for
8 circuit boards that did not work well would have been valuable to Meggitt because it still
9 would have given Meggitt a starting point, and a window into how a competitor designs
10 its product. Testimony of Johnson.

11 70. This discovery that its trade secrets had been sent to another company
12 caused RK to investigate and to contact law enforcement. Testimony of L. Smith.
13 Following further investigation which tied the sending of the information to defendant,
14 as detailed above, law enforcement obtained a warrant to search defendant's home.
15 During the search, RK's trade secrets and other documents were found on defendant's
16 computer, Exhibits 37-83, his USB flash drive, Exhibits 97-98, his phone, Exhibits 92-
17 93, and in paper documents throughout the house, Exhibits 100-103, 105-106; testimony
18 of Fitzpatrick. In addition, the PECC trade secrets and other documents were found on
19 defendant's computer. Exhibits 84-90; testimony of Fitzpatrick.

20 **G. The Value of the Trade Secrets**

21 71. The trade secrets at issue for both PECC and RK are valuable to those
22 respective companies. Testimony of defendant, Martinez, Owers, L. Smith, J. Smith,
23 Conn, Warren, Cordova.

24 72. Defense Expert Martinez agreed that the schematics at issue in this case
25 have value. Martinez opined that the documents have value to the victim companies
26 based on the amount of time and money they put into the designs, and would also be of
27 value to a competitor business. Martinez opined that an engineer can tell a lot of
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1 information from a schematic, and while reverse engineering is very difficult, a
2 schematic would help that process. A competitor could compare RK or PECC's
3 schematics to their own products to see what design ideas are contained in those
4 schematics, and if the competitor had similar products, or wanted to develop similar
5 products, the schematics would be very useful. Martinez also opined that if a schematic
6 has passed certification requirements, the schematic is more valuable, and because
7 schematics are frequently revised, engineers use previous schematics as starting points
8 for new designs. He testified that it is standard in the avionics industry for schematics to
9 include outdated parts because, once a circuit board passes the testing and certification
10 requirements, changes to its design are burdensome and time consuming. Martinez
11 testified that he would never give out the schematics or similar documents for his
12 company because they are his company's proprietary information. Martinez felt that the
13 schematics at issue in this case have value, and the designs are unique and not obvious.

14 Testimony of Martinez.

15 73. Based on the evidence presented at trial, the Court finds that had RK and
16 PECC's competitors put the stolen schematics to use that likely would have resulted in
17 serious losses to both victim companies.

18 74. PECC calculates that it cost them approximately \$500,000 to develop the
19 RAX Driver. Exhibit 129A; testimony of Warren, Conn. The RAX has only recently
20 entered the market, and PECC has several customers and potential customers who are
21 interested in the product. Testimony of Cordova, Mawhinney. If the RAX Driver
22 schematic had been successfully stolen by another company, it would have had a
23 significant impact on PECC's ability to control its market share for the RAX Driver and
24 similar products. Exhibit 129B; testimony of Cordova. Anticipated revenue for sales of
25 the RAX and repairs through 2020 are \$58,189,267. Exhibit 129B. Moreover, the
26 schematic for the RAX Driver has many similarities to the schematics for other PECC
27 products. Therefore, the potential value of the RAX Driver schematic is likely more
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1 than can be measured solely with reference to the market for the RAX Driver.

2 Testimony of Conn, Cordova.

3 75. From 2009-2011, it cost RK a total of \$1,199,251 to develop the schematics
4 for the 427 DU and DAU, 430 EFIS and IIDS, and KAI EHPD. Exhibit 122; testimony
5 of J. Smith. Although the 427 and 430 products had been designed about a decade
6 earlier, from 2009-2011, RK was engaged in what it called the “Reliability Improvement
7 Program,” which was a major upgrade of components to the 427 and 430 products.

8 Testimony of Owers. While defendant distributed schematics that were created in
9 connection with the “Reliability Improvemem Program,” these schematics were largely
10 based off of the original schematics for the 427 and 430. Accordingly, the actual cost of
11 producing these schematics is likely higher than \$1,199,251, as this figure does not
12 account for the original development costs of those products. Testimony of J. Smith.

13 76. In addition, from 2015 through 2019, RK estimates that it will generate
14 almost \$18 million in revenue from new product sales for the 427, 430, and KAI
15 products. Exhibit 122; testimony of J. Smith. Furthermore, in 2013-2014 alone, RK
16 generated almost \$3 million in revenue from its repair business for the five products at
17 issue in this case. RK anticipates generating over \$4 million in revenue for repairs of
18 those products from 2015 through 2019. Exhibit 122; testimony of J. Smith. If the
19 schematics were known to another company, that company would be able to compete
20 with RK for these revenues. Testimony of L. Smith, J. Smith.

21 **IV. CONCLUSIONS OF LAW**

22 To the extent necessary, each of these conclusions of law may be deemed a
23 finding of fact.

24 **A. Counts 1-28: Transmission of RK Trade Secrets**

25 For transmission of trade secrets as charged in Counts 1-28, the government must
26 prove the following: (1) defendant knowingly transmitted, sent, mailed, communicated,
27 or conveyed trade secret information knowing that he lacked authorization to do so; (2)
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1 the information was, in fact, a trade secret because (A) it was information that the owner
2 thereof has taken reasonable measures to keep such information secret, and (B) the
3 information derives independent economic value, actual or potential, from not being
4 generally known to, and not being readily ascertainable through proper means by, the
5 public; (3) defendant intended to convert the trade secret to the economic benefit of
6 anyone other than the owner; (4) defendant knew or intended that the offense would
7 injure the owner of the trade secret; and (5) the trade secret was related to a product or
8 service used or intended for use in interstate or foreign commerce.

9 Based on the evidence presented at trial, the Court finds that the government has
10 proven the elements beyond a reasonable doubt for each of the seven charged trade
11 secrets (Exhibits 7A, 7G, 7H, 7I, 7P, 7M, and 7X), and each of the four charged
12 transmissions (January 9, 2013 email transmission to Aspen in Counts 1-7 and Exhibit
13 19; January 14, 2013 email transmission to Meggitt in Counts 8-14 and Exhibit 4;
14 January 14, 2013 mailed transmission to Aspen in Counts 15-21 and Exhibit 17; and
15 January 14, 2013 mailed transmission to Barco in Counts 22-28 and Exhibit 23). Thus
16 the Court finds defendant guilty of Counts 1-28.

17 **B. Counts 29-32: Possession of RK Trade Secrets**

18 For possession of trade secrets as charged in Counts 29-32, the government must
19 prove the following: (1) defendant knowingly possessed trade secret information
20 knowing that he lacked authorization to do so; (2) the information was, in fact, a trade
21 secret because (A) it was information that the owner thereof has taken reasonable
22 measures to keep such information secret, and (B) the information derives independent
23 economic value, actual or potential, from not being generally known to, and not being
24 readily ascertainable through proper means by, the public; (3) defendant intended to
25 convert the trade secret to the economic benefit of anyone other than the owner; (4)
26 defendant knew or intended that the offense would injure the owner of the trade secret;
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1 and (5) the trade secret was related to a product or service used or intended for use in
2 interstate or foreign commerce.

3 Based on the evidence presented at trial, the Court finds that the government has
4 proven the elements beyond a reasonable doubt for each of the four charged trade secrets
5 (the schematics detailed in Exhibits 7A, 7G, 7M, and 7P, as found within Exhibits 100
6 and 102) found in defendant's house on February 14, 2013. Thus the Court finds
7 defendant guilty of Counts 29-32.

8 **C. Count 33: Possession of PECC Trade Secret**

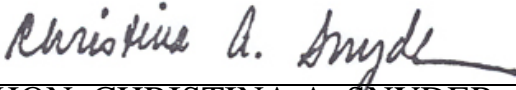
9 For possession of a trade secret as charged in Count 33, the government must
10 prove the following: (1) defendant knowingly possessed trade secret information
11 knowing that he lacked authorization to do so; (2) the information was, in fact, a trade
12 secret because (A) it was information that the owner thereof has taken reasonable
13 measures to keep such information secret, and (B) the information derives independent
14 economic value, actual or potential, from not being generally known to, and not being
15 readily ascertainable through proper means by, the public; (3) defendant intended to
16 convert the trade secret to the economic benefit of anyone other than the owner; (4)
17 defendant knew or intended that the offense would injure the owner of the trade secret;
18 and (5) the trade secret was related to a product or service used or intended for use in
19 interstate or foreign commerce.

20 Based on the evidence presented at trial, the Court finds that the government has
21 not proven all of the elements beyond a reasonable doubt for the single charged PECC
22 trade secret, Exhibit 85. Specifically, while defendant prepared a "readme.doc" file for
23 the PECC trade secret, there was no evidence presented at trial that he shared that trade
24 secret information with any third parties. Instead, the evidence presented at trial showed
25 that the PECC trade secret sat idle on defendant's computer for two years. Moreover,
26 while the Government presented significant evidence that defendant harbored ill will
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1 towards RK and desired to harm or embarrass RK with its competitors, the Government
2 did not present similar evidence regarding defendant's feelings of ill will towards PECC.

3 Accordingly, the Court finds that the Government has not proven beyond a
4 reasonable doubt that defendant either (a) intended to convert the PECC trade secret to
5 the economic benefit of anyone other than the owner or (b) knew or intended that the
6 offense would injure PECC. Thus the Court finds defendant not guilty of Count 33.⁸

7
8 IT IS SO ORDERED.

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11 DATE: January 4, 2016

HON. CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

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17 ⁸ Defendant previously filed a motion to dismiss the indictment. As the basis for this
18 motion, defendant argued that the indictment was multiplicitous because it charged him
19 with twenty-eight counts of transmitting trade secret information based upon only four
20 distinct transmissions, and five counts of possession of trade secret information based
21 upon only one simultaneous possession of trade secret information. In ruling on
22 defendant's motion, the Court agreed with defendant that the indictment was
23 multiplicitous and that, in fact, defendant should only have been charged with four
24 counts of transmitting trade secret information and one count of possession of trade
25 secret information. Nonetheless, the Court determined that, because the Government
26 would present the same evidence regardless of the number of counts charged, it was not
27 appropriate to dismiss the indictment at that time. Accordingly, the Court denied
28 defendant's motion and noted that defendant could renew his objection before sentencing
if a judgement was entered against him on any of the multiplicitous counts. Now that the
Court has found defendant guilty as to thirty-two of the indictments counts, defendant
may now renew his objection that the several of the counts in the indictment are
multiplicitous.